

A STATE OF ANDHRA PRADESH

v.

P.V. HANUMANTHA RAO (D) THR. LRS. AND ANR.

OCTOBER 14, 2003

B [SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Constitution of India—Articles 226 and 227—Judicial review—Jurisdiction of High Court—Scope of—Case of land grabbing—Lower court overlooking material evidence and circumstances—No appeal provided for against order of the lower court—Held, High Court can look into evidence to see if the court below has ignored vital evidence—Andhra Pradesh Land Grabbing (Prohibition) Act, 1982—Section 2(d).

D *Andhra Pradesh Land Grabbing (Prohibition) Act, 1982—Section 2(d)—Land grabbing—Proof of—Mere bona fide claim to land occupied not sufficient—Burden on the occupant to prove lawful title.*

E *Andhra Pradesh Land Grabbing (Prohibition) Act, 1982—Sections 7 and 8—Setting up of Special Court and exclusion of jurisdiction of regular civil courts—Effect of—Held, provisions should be construed strictly—Interpretation of Statutes.*

F The appellant filed a suit against the respondents for a declaration that certain land occupied by the respondents was government land. After coming into force of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and constitution of Special Court under the said Act, the suit was transferred to the Special Court.

G The case of the respondents was that the land belonged to the erstwhile ruler of Nizam State and had been granted to their predecessor-in-title as 'Muntakhab' or 'Inam'. After passing of the Inam Abolition Act, the predecessor-in-title had filed a petition before the Revenue Officer for grant of occupancy rights under the Act, which was allowed in his favour. The Collector reversed the order in appeal. The Board of Revenue allowed the review petition filed against the order of the Collector, holding that the land was granted as 'mafi-inam' to the H predecessor-in-title of the respondents. The order of the Board of

Revenue was not challenged by the appellant. The respondents also filed a writ petition for directing the authorities to implement the order of the Board of Revenue, which was allowed by the High Court. A

The Special Court declared the respondents as land grabbers holding, *inter alia* that (a) the land in occupation of the respondents was not shown as a separate survey number in the revenue records; (b) 'Inam' was not entered in any revenue records; (c) the 'muntakhab' was not genuine and valid and the Collector had found it to be not proved. B

The respondents filed a writ petition against the order of the Special Court. The High Court summoned the original file and after considering it, held that there was evidence of existence of grant by 'Muntakhab' and reliance placed by the Special Court on the order of the Collector was erroneous as the order had been set aside by the Board of Revenue. The High Court also held that in holding that the revenue records did not show entries in favour of the grantee, the Special Court erred and overlooked the entries in pahani patrikas, which showed that the land was granted as 'Inam' to the predecessor-in-title of the respondents. The predecessor-in-title of the respondents had been litigating to get his name mutated in the revenue record. The High Court allowed the writ petition in favour of the respondents. C D E

In appeal before the Court, the appellant contended that the High Court had exceeded its writ jurisdiction by re-appreciating the evidence.

Dismissing the appeal, the Court F

HELD : 1. The High Court did not exceed its jurisdiction in upsetting the judgment of the Special Court. [755-A]

2.1. The remedy of writ petition available in the High Court is not against the 'decision' of the subordinate court, tribunal or authority but it is against the 'decision making process'. In the 'decision making process', if the court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court H

- A** under Articles 226 and 227 of the Constitution of India can be invoked to set right such error and prevent gross injustice to the party complaining. This Court has recognised the right of the High Court to interfere in orders of subordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings
- B** such as when it is based on clear misreading or utter disregard of the provisions of law and (2) a grave injustice or gross failure of justice has occasioned thereby. [751-G-H, 752-A, 752-E-F]

2.2. No doubt, neither in exercise of power of writ under Article 226 nor in supervisory jurisdiction under Article 227 of the Constitution of India, the High Court will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence but the power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied has been recognised. [752-F-G]

Surya Devi Rai v. Ram Chander Rai and Ors., [2003] 6 SCC 675; *Swarn Singh & Anr. v. State of Punjab & Ors.*, AIR (1976) SC 232, referred to.

J.M.D. Alloys Ltd. v. Bihar State Electricity Board & Ors., [2003] 5 SCC 226, cited.

3.1. With the growing menace of land grabbing, the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 constitutes Special Courts and ousts jurisdiction of regular civil courts in respect of land alleged to have been grabbed. The Special Court has been conferred powers of civil court to examine all questions of title and possession with respect to the land alleged to have been grabbed. The findings of the Special Court are binding and conclusive on the parties and all others interest in the land which is alleged to have been grabbed. Against the decision of the Special Court, no appeal is provided. Where the regular remedy provided by general law is ousted by special law, the provisions of the latter deserve to be construed strictly. [754-D-E, 750-F-G, 754-E]

3.2. When an occupant of the land is alleged to be a 'land grabber', he has to justify his possession and prove his source of the title. Where source of title by an occupant is produced, the Special

Court is required to examine it to consider whether on the basis of evidence of the title produced by him, he can be held to be not falling in the definition of 'land grabber' under sub-clause (d) of Section 2 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. A mere doubt raised by the State on the title and possession of the occupant of a land does not make him a land grabber. Whenever the right of the occupant is questioned by the State, it is not enough for the occupant to show that he has a *prima facie bona fide* claim to the land occupied but a burden is cast on him to prove that he is in occupation and possession of the land under a lawful title. [754-E-F, 751-E-G]

Konda Lakshmana Bapuji v. Government of A.P. and Others, [2002] 3 SCC 258, referred to.

3.3. In the present case, the occupants had produced documents to prove their source of title and long possession of their predecessor-in-title. This title deed with revenue entries based on them produced by the occupants should have been treated sufficient for the purpose of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 to treat the occupants of the land to be falling outside the definition of 'land grabber'. It is not a case where the occupants have tried to justify their position on the basis of a mere *bonafide* claim to the land. They have produced oral and documentary evidence on the 'Muntakhab' and justified their position as alienees from the heirs of original grantees. [754-F-H, 755-A]

3.4. The Special Court declared the occupants as 'land grabbers' holding that the Muntakhab contained in the file is not reliable and supported by any corresponding revenue entries in favour of the occupants. The High Court, which alone could have examined the correctness of the decision of the Special Court, in the absence of any remedy of appeal, rightly observed that it was within its power to re-examine the evidence to ascertain the correctness of the findings of the Special Court. The High Court interfered with the judgment of the Special Court not merely because it found its reasoning or conclusions erroneous but it found that important evidence corroborating the grant was not properly scrutinised by the Special Court and important revenue records available were disregarded. According to the High Court, the Special Court was clearly wrong in holding the occupants

A of the land as 'land grabbers' when they had produced documents of title and others of the Revenue Board and the High Court. The High Court in its writ jurisdiction was, therefore, fully justified in examining those documents of title and upsetting the judgment of the Special Court on the ground that material evidence and circumstances proved **B** by the occupants were overlooked in holding the occupants as land grabbers. [753-B-D, 753-F-H, 754-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8601-8605 of 1997.

C From the Judgment and Order dated 18.9.96 of the Andhra Pradesh High Court in W.P. Nos. 10074, 10075, 10076, 17015 and W.A. No. 284 of 1992.

WITH

D S.L.P. No. CC No. 4870 of 2000.

Ms. K. Amareshwari, Ms. T. Anamika for G. Prabhakar and Ambhoj Kumar Sinha for the Appellant.

E K. Ramamoorthi, Krishnamurthi Swami, P. Niroop, R. Chandra Shekhar Reddy and Ms. D. Bharthi Reddy for the Respondents.

The Judgment of the Court was delivered by

F **DHARMADHIKARI, J.** : The State of Andhra Pradesh is in appeal against the common judgment dated 18.9.1996 passed by the High Court of A.P. in W.P. No. 10074 of 1992 and batch of writ appeals whereby the judgment dated 30.7.1992 of the Special Court, Hyderabad under the Andhra Pradesh Grabbing (Prohibition) Act, 1982 (for short 'the Act of 1982') has been reversed with declaration that the respondents are not 'land grabbers' within the meaning of definition clause contained in Section 2(d) **G** of the Act of 1982.

The principle submission made before us by the learned senior counsel appearing for the State of Andhra Pradesh is that the High Court **H** in exercise of its writ jurisdiction had no justification, as in appeal, to re-

appreciate the whole evidence led by the parties before the Special Court and record contrary conclusions. Reliance is placed on *Swarn Singh & Anr. v. State of Punjab & Ors.*, AIR (1976) SC 232 and *J.M.D. Alloys Ltd. v. Bihar State Electricity Board & Ors.*, [2003] 5 SCC 226, paras 14 & 15 at pages 237-238. A

The learned senior counsel appearing for the respondents supported the judgment of the High Court contending that the Special Court, established under the Act of 1982, overlooked vital documents of title produced by the occupants of the disputed land and gave undue importance to the fact that in revenue papers, the names of the occupants are not recorded as being in lawful possession of the lands in question. The submission made is that where a Special Court exercising exclusive jurisdiction conferred on it to determine whether the occupant of a land is a 'land grabber' or not, ignores vital piece of evidence and takes decision by giving importance to unimportant facts and circumstances, the power of the High Court under Article 226 & 227 is wide enough to correct such gross errors of the Special Court. Reliance is placed on *Surya Dev Rai v. Ram Chander Rai & Ors.*, [2003] 6 SCC 675. B C D

According to the case of the State, total land in Survey No. 9 of Saroornagar Village in Rangareddy District of Andhra Pradesh measures Acres 540.32 guntas. Out of the said area, acres 295.18 guntas were set apart in favour of the ex ruler of erstwhile Nizam State as Sarfekhas lands (personal property of the Nizam). The balance of acres 245.14 guntas, according to the State, was entered in revenue records as 'Kancha' lands. E

On the other side, the case of the occupants of the land is that the erstwhile ruler in the Nizam State had granted as 'Muntakhab' or 'Inam', sixty acres of land out of the above Survey No. 9 to his Horseman – Syed Khasim Silhedar. After the death of Syed Khasim, his son Gulam Ahmed sold 45 acres of land to respondent – P.V. Hanumantha Rao. The remaining 15 acres of land is claimed to be in possession of heirs of Gulam Ahmed who are respondents to these appeals and were parties before the High Court. A petition for grant of occupancy rights under Inams Abolition Act was filed before the Revenue Divisional Officer which was allowed in favour of Gulam Ahmed. The Collector, in appeal, reversed that order. In Writ Petition Nos. 2449/1988 & 7520/1988 filed against the said order, the F G H

- A High Court in its order dated 31.12.1991 did not go into the merits of the contentions of the parties because by that time the State of A.P. had filed a suit for declaration of the land in dispute as the government land and on constitution of Special Court under the Act of 1982, the suit was transferred for trial to Special Court in accordance with Section 8(8) of the Act of 1982.

The occupants of the land continued to assert their rights and approached the Board of Revenue for mutation of their names on sixty acres of land in Survey No. 9 which they claimed to be in their actual possession. In the review petition filed by the occupants of the land the Board examined the documents of the produced by the occupants and by order dated 06.8.1974 (Ex. A-15) came to the conclusion that sixty acres of land from Survey No. 9 in Saroornagar Village was granted as mafi-inam to Syed Khasim. The review petition was allowed by order dated 06.8.1974 of Board of Revenue but option was given to the government to take over the said Inam land, if they so desire, on payment of compensation. The said order of the Board of Revenue remained unchallenged by the State. The respondents – occupants then filed a writ petition seeking implementation of the order of the Board of Revenue mentioned above. The writ petition No. 1683 of 1977 filed by the occupants was allowed by order dated 01.3.1978 of the High Court with issuance of directions to the authorities to implement the order of Board of Revenue dated 06.8.1974 whereunder the rights of the occupants to the land in question were recognised. An option was left to the government to invoke its revisional powers, if available, in accordance with law.

After examining the documents of the title and other revenue records produced by the occupants of the land, the Special Court decided against the occupants of the land and held them to be 'land grabbers'.

In paragraph 44 of its order, the Special Court records thus :

"In none of these surveyys, this sixty acres of land said to be belonging to Syed Khasim Silhedar was sub-divided nor separately shown.

It does not show separate survey number of this sixty acres of land."

Relying on the letter of the Collector (Ex. A-19) sent on a query made regarding existence of records with regard to the claim to ownership of the occupants of the land, the Special Court made following observations :

“Ex. C-9 is the letter addressed by the Administrator, H.E.H., the Nizam’s Private Estate, to the Collector, while making inquiry under Ex. A-19. It was referred by the Collector also under Ex. A-19. In this, he stated that even after thorough search the existence of the file at any time has not been established, that Syed Khasim might have been an employee of the Sarfekhas but he was never given any land as Inam in Saroornagar village in Survey No. 9/1 to the extent of 60 acres or even less, and that the whole record submitted to this office by the said GPA of Gulam Mohammed appears to be a fictitious one. This assertion of this office cannot be empty as such a huge Inam granted will not be left without any record all these years, let alone entering in the revenue records.”

The Special Tribunal thus proceeded and recorded one of its conclusions thus :

“Thus it is seen since the date of grant in 1313-F (1903) the Inam was not entered in the revenue records and it was never given effect to by the Sarfekhas authorities.”

The Special Court considered various documents and orders produced by the parties before it and recorded its final conclusion thus :

“The result of discussion of these issues 2 and 3 is that the grant is not available, *Muntakhab* is not true and the Inam is not entered in any of the revenue records, and consequently, we hold that the respondents have failed to prove that the suit land is inam land, and accordingly, we record our finding on issues 2 and 3 in the negative.”

The High Court in writ petition preferred by the respondents reexamined the documents of title and other revenue papers produced before it including the various orders of revenue authorities and earlier orders of the High Court passed from time to time. It then recorded contrary

A conclusions and set aside the order of the Special Court.

B The main controversy is with regard to the acceptance of the claim of title on the basis of muntakhab (Ex. B-9) granted to Syed Khasim – predecessor-in-title of the present respondents. The High Court examined muntakhab (Ex. B-9) and the other connected documents to consider whether the finding of Special Court to reject that document of title as unreliable was justified in law. On the question of validity and reliability of muntakhab (Ex. B-9), the High Court held thus :

C “Ex. B-9, the Xerox copy of Muntakhab (title-deed) dated Ist Dai 1313 Fasli (5.11.1903) shows grant of sixty acres of land to Syed khasim. Ex. B-10 is the note file signed by Sikandar Yar Jung. Exs. B-9 and B10 are sent to Khurshid Jahi Paigah Authorities by the Secretary of Sarefkhas. By letter dated 29.4.1917 (Ex.B-11), the Secretary of Sarfekhas Mubarak to the Tahsildar East, D Atrafalda District, stated that sixty acres of land is part of Sarfekhas land of Nizam and since Sayed Khasim’s right has been established over that land, arrangement may be made that no one should enter into the possession of Syed Khasim and make entries in revenue records.”

E The High Court summoned the original file (Ex. C-4) of the Sarfekhas property as the Special Court had seen the original record translated in English from Urdu. According to the High Court, the contents of file in Ex. C-4 as to the existence of grant under ‘*muntakhab*’ in favour of Syed Khasim could not have been questioned by the Special Court. On the issue F of reliability of the contents of file (Ex.C-4) and the document of muntakhab (Ex.B-9), the High Court found apparent mistake committed by the Special Court in holding the document of title as unreliable for want of seal, boundaries and plan with the grant. The High Court observes in above respect thus :-

G “The observation of the Special Court that there is in seal on Ex. B-9 and no boundaries and plan are appended is not correct because we have perused Ex.C-4 file wherein a copy of Ex.B-9 is there, which bears a seal and an endorsement of its issuance. H As regards the boundaries, it is to be noticed that when a part of

land is bifurcated from vast extent of land, mentioning of boundaries in grant of certificate does not arise unless survey is conducted and separate area is earmarked. The reliance placed by the Special Court on the fact that Assistant Collector held the *muntakhab* as not proved, is not proper since the Board of Revenue on verification of Exs. C-4, B-9 and B-10 accepted the grant and directed to implement the same in revenue records. The effect of the order of the Assistant Collector is deemed to be set aside and no more in existence. It cannot, therefore, be said that Ex. B-9 is not genuine and valid. Ex. B-10 contains the signature of Sikandar Yar Jung, which is found to be similar as that of him. So, it is not possible to come to conclusion that Exs. B-9 and B-10 have been inserted into the file. We, therefore, hold that Exs. B-9 and B-10 are genuine documents and are proved.

The High Court then referred to Ex. B-12, a certified copy of the judgment in case No. 270 of 1902 on the file of the Second Judge, City Civil Court, Hyderabad in which the claim of Syed Khasim as Inamdar was upheld by the civil court. According to the High Court, this judgment corroborates the contents of the file (Ex. C-4) in which are contained the *muntakhab* (Ex. B-9) and grant (Ex. B-10).

In negating the claim of the occupants, the Special Court had attached great importance to the fact that pursuant to the grant under *Muntakhab*, revenue records do not show entries in favour of the grantee and his legal representatives. The High Court has found that the Special Court has grossly erred in that regard and overlooked entries in *pahani patrikas* (Ex. A-2 to A-13 and A-2 to A-28) covering period from 1962-63 to 1986-87. The relevant part of the decision of the High Court contrary to the finding of the Special Court on non-existence of entries in the revenue records in favour of the occupants of land, reads as under :

“All the above documents show that sixty acres of land in survey no. 9/1 of Saroornagar village was granted as inam to Syed Khasim. He was in possession of that land during his life time. He has taken up proceedings for getting his name mutated in revenue records and the litigation continued. Irrespective of litigation, the documents clearly show that inam was granted to

A Syed Khasim and he was trying to get his name mutated in revenue records.

B The petitioner relied on pahani patrikas (Exs. A-2 to A-13 and A-2 to A-28) for the period from 1962-63 to 1986-87, which are for the continuous periods. It is a fact that the name of the son of Inamdar of fifth respondent. It is a fact that the name of the son of Inamdar of fifth respondent has not been mentioned therein. It is to be noticed that since the inception the inamdar, his son and thereafter the fifth respondent were agitating to get the names recorded in revenue records before the Collector. In those circumstances, possibly their names do not find place in the revenue records. Unless the names are mutated in Jamabandi, they cannot be carried over each year. Non-mention of names of the inamdar or his son in revenue records is not fatal to the case of fifth respondent. Exs. A-29 to A-35 are faisal pattis from 1968-69 to 1977-78. In documents, the name of fifth respondent is recorded as a person in possession and he was directed to pay revenue and penalty as trespasser. Thus, the name of fifth respondent does find place in revenue records.”

E Thus finding various errors in the order of the Special Court due to misreading of certain documents and overlooking relevant records, the High Court recorded the following conclusions :

F According to the definition of ‘inam’ under Section 2(c) of the Andhra Pradesh (Telangana Area) Abolition Inams Act, the land held under a gift or grant made by the Nizam or other competent grantor and continued by virtue of Muntakhab or title deed is said to be inam land. The evidence of fifth respondent and eighth respondent coupled with the documentary evidence referred to above clearly show that inam was granted to Syed Khasim and thereafter his Gulam Ahmed succeeded and they were agitating their claim before the revenue authorities for getting their names entered in revenue records. Fifth respondent, who was a tenant first and then a purchaser, has been in possession of the land and the same has been proved by the decrees of the civil court and the judgments of the criminal court in the proceedings under

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Section 145 Cr.P.C. Merely because their names are not entered in revenue records, it cannot be said that there was no inam. Once they are in physical possession of the land, non-entry of their names in revenue records, will not vitiate the inam validly granted to the inamdar. A

Before the High Court, it was urged on behalf of the State, as has been urged before us, that scope of interference under Article 226 of the Constitution of India by the High Court, is limited and it cannot act like an appellate court. B

In the present appeals, in the light of the findings and conclusions recorded by the Special Court and the High Court, two questions arise for decision. *The first* is with regard to the scope of jurisdiction of High Court under Article 226 of the Constitution in petition against the judgment of the Special Court and the *second* is whether on the basis of the documents on record the High Court was justified in holding that the occupants of the land cannot be termed as 'land grabbers' under the provisions of the Act of 1982. C D

Taking up first the second question relating to the provisions of the Act of 1982, we find that the object and scheme of the Act has to be examined. The Statement of Objects and Reasons for bringing into effect the Act of 1982 is a key to understanding the various provisions of the Act and the terms defined therein. They read thus : E

“Statement of Object and Reasons :- It has come to the notice of the government that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force, or by deceit or otherwise lands belonging to the government, a local authority, a religious or charitable institution or endowment, including a wakf or any other private person. The land grabbers are forming bogus cooperative housing societies or setting up fictitious claims and including in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealers or otherwise in favour of certain section of people, resulting in large scale accumulation of the unaccounted wealth. As public order is also adversely affected thereby now and H

A then by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable land, it was felt necessary to arrest and curb such unlawful activities immediately by enacting a special law in that regard.”

B To fulfil the above object, the Act defines ‘Land Grabber’ and ‘Land Grabbing’ in Section 2(d) & 2(e) as under :

C “2(d). ‘Land Grabber’ means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest:

D 2(e) ‘Land Grabbing’ means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such land, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorised structures; and the term ‘to grab land’ shall be construed accordingly.”

E Under section 7, the Special Courts are constituted with extraordinary powers. They can evolve their own procedure not ‘inconsistent with the natural justice and fair play’ and notwithstanding the provisions contained in the Code of Civil Procedure. The relevant provision in sub-section (5D) (i) of section 7 reads as under :

G “7(5D)(i). Notwithstanding anything in the Code of Civil Procedure, 1908, the Special Court may follow its own procedure which shall

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not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the civil liability.” A

Section 8(1) regulates powers and procedures of the Special Court and reads thus : B

“8(1). Procedure and powers of the Special Court. – The Special Court may, either *sou motu*, or on application made by any person, officer or authority take cognizance of any try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit. C

Sub-section (6) of section 8 makes the finding of the Special Court on the question of title and ownership of the land alleged to have been grabbed as final and binding on all persons having interest in such land. D
Sub-section (6) of section 8 reads thus :

”Section 8(6). – Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land. E F

Under Section 9, powers of civil court have been conferred on Special Court and it is deemed to be a civil court for the purposes mentioned therein:

“9. *Special Court to have the powers of the Civil Court of and the Court of Session* :– Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, the Andhra Pradesh Civil Courts Act, 1972 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the H

- A Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of session and the person conducting a prosecuting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.”

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In accordance with sub-section (8) of section 8, any case pending before any court or other authority which would have been within jurisdiction of the Special Court shall stand transferred to the Special Court.

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“Section 8(8). – Any case, pending before any court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court.”

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It is in accordance with sub-section (8) of section 8 that the suit for declaration of title filed by the State of A.P. in the civil court, stood transferred to the Special Court for trial and decision.

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On examination of the relevant provisions of the Act of 1982 and in the light of its *objects and reasons*, it is apparent that in cases of alleged land grabbing, exclusive jurisdiction is conferred on the Special Court.

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Jurisdiction of civil court on such subject matter stands ousted. The Special Court has been conferred powers of civil court to examine all questions of title and possession with respect to the land alleged to have been grabbed. The findings of the Special Court are binding and conclusive on the parties and all others having interets in the land which is alleged to have been grabbed. Against the decision of the Special Court, no appeal is

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provided. Only remedy of aggrieved party is to approach the High Court under Articles 226 or 227 of the Constitution of India. It is on the basis of the aforesaid provisions that we have to determine the scope of interference of the High Court in writ petition in the judgment and decision of the Special Court. In the case of *Konda Lakshmana Bapuji* (supra), this

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Court, after examining the scheme of the Act, held :

“To make out a case in a civil case that the appellant is a land grabber the first respondent must aver and prove both the ingredients – the factum as well as the intention – that the appellant falls in the categories of the persons, mentioned above [clause (d) of section 2 of the Act], has occupied the land in dispute, which belonged to the first respondent, without any lawful entitlement and with a view to or with the intention of illegally taking possession of such land or entering into land for any of the purposes mentioned in clause (e) of Section 2 of the Act, summarised above.

What needs to be looked in the present controversy is : whether the appellant has any lawful entitlement (proprietary or possessory) to the land in dispute and had come into possession of the land in dispute unauthorisedly”.

The Division Bench in that case further observed :

“A mere *prima facie bona fide* claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression “land grabber”. What is germane is lawful entitlement to and not a mere *prima facie Bona fide* claim to the land alleged to be grabbed.”

The provisions of the Act of 1982, which are to be understood in the light of Statement of Objects and Reasons for the Act and the decision of this Court in case of *Konda Lakshmana Bapuji* (supra), indicate that a mere doubt raised by the State on the title and possession of the occupant of a land does not make him ‘a land grabber’. Whenever the right of the occupant is questioned by the State, it is not enough for the occupant to show that he has a *prima facie bona fide* claim to the land occupied but a burden is cast on him to prove that he is in occupation or possession of the land under a lawful title.

True it is that remedy of writ petition available in the High Court is not against the ‘decision’ of the subordinate court, tribunal or authority but it is against the ‘decision making process’. In the ‘decision making process’, if the court tribunal or authority deciding the case, has ignored

A vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction”, the constitutional power of the High Court under Articles 26 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining.

B In the case of *Surya Devi* (supra) while examining the nature and ambit of power of the High Court to issue writs under Articles 226 or 227 of the Constitution, the above stated legal position has been recognised by observing thus :

C “Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules.

D

E At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.”

F This Court has recognised the right of the High Court to interfere in orders of sub-ordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law and (2) a grave injustice or gross failure of justice has occasioned thereby.

G No doubt, it was held that neither in exercise of power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in the re-appreciation or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied has been recognised even in the case of *Swarn Singh & Anr.* (supra) on which strong reliance was placed on behalf of the State. The relevant observations

H are :

In regard to a finding of fact recorded by an inferior tribunal, a writ of *Certiorari* can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law.

After detailed examination of the findings of the Special Court and the contrary findings recorded by the High Court, we do not find that the High Court has in any manner exceeded its writ jurisdiction. The Special Court declared the occupants as 'land grabbers' holding that the Muntakhab contained in the file (Ex. C-4) is not reliable and supported by any corresponding revenue entries in favour of the occupants. The High Court, which alone could have examined the correctness of the decision of the Special Court, in the absence of any remedy of appeal, rightly observed that it was within its power to re-examine the evidence to ascertain the correctness of the findings of the Special Court. In doing so, the High Court found that the documents of title *Muntakhab* (Ex. B-9) contained seal of the Ex Ruler. The boundaries and plan were appended to it. It found that the Special Court wrongly held that since the *Muntakhab* did not earmark area of grant in the survey No. 9, the grant was insufficient to prove title to the land in actual occupation of the respondents. The High Court also found that order of the Board of Revenue directing mutation in favour of the occupants remained unchallenged and was not implemented despite directions of the High Court in the earlier writ petition. The High Court also found that the rejection of the title of the occupants on the ground that there were no mutation entires made pursuant to the muntakhab was an error caused by overlooking important revenue entries in favour of the occupants which are contained in pahani patrikas (Exs. A-2 to A-13 and A-2 to A-28) for the period from 1962-63 to 1986-87. We have extracted above the findings of the Special Court and the contrary findings recorded by the High Court to show that the High Court interfered with the judgment of the Special Court not merely because it found its reasoning or conclusions erroneous but it found that important evidence corroborating the grant i.e. muntakhab (Ex. B-9) contained in the file (Ex. C-4), which was summoned from the office of the Erstwhile Ruler, was not properly scrutinised by the Special Court and Important revenue records available were disregarded. According to the High Court, the Special Court was

- A clearly wrong in holding the occupants of the land as 'land grabbers' when they had produced documents of title and orders of Revenue Board and the High Court. The legal representatives of the original grantee Syed Khasim had been throughout litigating in the revenue courts and the High Court for obtaining mutation in their names in the revenue records and for
- B recognition of their rights as *inamdars* by virtue of the grant of the Ex Ruler in their favour. The Special Court on unsubstantial grounds had rejected their claims to title and possession of the land. The High Courts in its jurisdiction was, therefore, fully justified in examining those documents of title and upsetting the judgment of the Special Court on the ground that
- C material evidence and circumstances proved by the occupants were overlooked in holding the occupants as land grabbers. In the course of hearing of these appeals, the relevant documents of title were placed before us for perusal and translated copies of the same have been supplied to us in the form of an additional paper-book. We have heard the parties and ourselves looked into the papers to find that there exists overwhelming
- D record of title and possession of the land in favour of the occupants and they could not have been termed as 'land grabbers'.

- With the growing menace of land grabbing, the Act, of 1982 constitutes Special Courts and ousts jurisdiction of the regular civil courts
- E in respect of land alleged to have been grabbed. Where the regular remedy provided by general law is ousted by special law, the provisions of the latter deserve to be construed strictly. We have examined the scheme and object of the Act and examined its relevant provisions. When an occupant of the land is alleged to be a 'land grabber', he has to justify his possession and
- F prove his source of title. Where source of title by an occupant is produced, the Special Court is required to examine it to consider whether on the basis of evidence of title produced by him, he can be held to be not falling in the definition of 'land grabber' under sub-clause (d) of Section 2 of the Act. In the present case, the occupants had produced documents to prove their source of title and long possession of their predecessor-in-title being
- G the original grantee under a *Munthakhab* issued by the Ruler of erstwhile Nizam State. This title-deed with revenue entries based on them produced by the occupants should have been treated sufficient for the purpose of the Act to treat the occupants of the land to be falling outside the definition of 'land grabber'. It is not a case where the occupants have tried to justify
- H their possession on the basis of a mere *bona fide* claim to the land. They

have produced oral and documentary evidence on the Munthakhab and justified their possession as alinees from the heirs of the original grantees. A

For the aforesaid reasons, in our view, the High Court did not exceed its jurisdiction in upsetting the judgment of the Special Court.

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B

Leave to file appeal against the impugned judgment of the High Court has been sought by Urban Huts & Slum Dwellers Association through its Secretary. The submission made is that on the land alleged to have been grabbed by the respondents, several hutment dwellers are in occupation and since the judgment binds them, they were necessary parties to be heard by the Special Court and the High Court. C

Since the hutment dwellers individually or through their association were not parties in the civil suit filed by the State which stood transferred to Special Court, we find no ground to grant leave to the Association of the huts and slum dwellers to file an appeal. In view of the judgment rendered by us in the main Civil Appeal Nos. 8601-8605 of 1997 preferred by the State of A.P., the slum dwellers will have to work out their rights independently. Their right and source of occupation, if any, is different in each case and it is not possible to decide their rights in these appeals which arise out of the common judgment of the Special Court rendered between parties impleaded in the cases before it. The leave to file appeal is, therefore, refused. D E

In the result Civil Appeal Nos. 8601-8605 of 1997 are dismissed but in the circumstances without any order as to costs. F

Permission to file Special Leave Petition (CC 4870 of 2000) is refused.

B.K.M.

Appeal dismissed. G